

Joshua Bernstein

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

- - - - - X

JOSHUA BERNSTEIN,

Plaintiff,

- against -

Index No:  
02579/09

BAYROCK GROUP, LLC,

Defendant.

- - - - - X

11 Martine Avenue  
White Plains, New York  
March 8, 2010  
10:04 a.m.

EXAMINATION BEFORE TRIAL OF  
JOSHUA BERNSTEIN, the Plaintiff herein,  
taken by an attorney for the Defendant,  
pursuant to Notice and Order, held at the  
above place and time before Apryl S.  
Montero, a Stenotype Reporter and Notary  
Public within and for the State of New  
York.

\* \* \* \*

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1 A. Most do, yes.  
2 Q. Did you ever take that hard  
3 drive, download any of it for any reason  
4 whatsoever?  
5 MR. OBERLANDER: Compound  
6 question. Objection.  
7 Q. Did you ever take out that  
8 hard drive physically?  
9 A. No.  
10 Q. Did you ever download  
11 portions of the hard drive?  
12 A. I believe so.  
13 Q. Could you explain that when,  
14 how, what did you download, for what  
15 purpose?  
16 A. At the direction of Felix  
17 Satter I downloaded regularly files from  
18 that hard drive and the server.  
19 Q. What drives, what files?  
20 Particular files or groups of files?  
21 A. Groups, various.  
22 Q. What directions did Felix  
23 give you as far as --  
24 A. To keep them offsite, an

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1 archival copy as much of the server as I  
2 could. This was on or about December 17,  
3 2007, I think well before, when he was  
4 afraid that the firm was going to screw  
5 him, that he wouldn't be able, you know,  
6 to make his profits of his half of the  
7 ownership of the firm.  
8 Q. And did you follow his  
9 instructions?  
10 A. Yes.  
11 Q. So you downloaded files from  
12 what computers or what servers?  
13 A. There was only one active  
14 server within the firm.  
15 Q. What files?  
16 A. Various e-mail files.  
17 Q. Of whose?  
18 A. Of various users.  
19 Q. Okay. I'm going to ask you  
20 about that in a couple of minutes. I  
21 want to finish with this exhibit.  
22 Please turn to page 11. Did  
23 you receive an e-mail from Felix Satter  
24 on September 8th saying, "Where are you?"

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1 It's September 8, 2008, on page 11?  
2 A. Yes.  
3 Q. And on page 12 did you  
4 receive another one from him on  
5 September 4th -- these may be -- I tried  
6 to keep them chronological, but I see  
7 that September 4th comes after September  
8 8th. "Where are you?"  
9 A. Yes.  
10 Q. So both on September 4th and  
11 September 8th he, Felix, asked you where  
12 you were?  
13 A. Sure, which he would  
14 regularly send to the employees who  
15 worked for him, including Dan Ridloff,  
16 and we'd correspond about where we were  
17 at the time.  
18 Q. And on September 4th on  
19 page 13 he says, "Where are you? Answer  
20 now."  
21 Did you receive that?  
22 A. Yes.  
23 Q. Does that indicate to you  
24 that he was impatient to hear from you?

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1 A. Yes, because I was sleeping  
2 at this time.  
3 Q. You were in Europe?  
4 A. Yes.  
5 Q. Let's go back to the --  
6 THE WITNESS: Can I take a  
7 break, a bathroom break.  
8 MR. DOMB: Sure.  
9 (Whereupon, a short recess  
10 was taken.)  
11 MR. DOMB: Let's mark the  
12 next exhibit. I think it's a  
13 multipage exhibit which I've  
14 numbered 1 through 24.  
15 MR. OBERLANDER: Off the  
16 record.  
17 (Whereupon, a discussion was  
18 held off the record.)  
19 (Whereupon, Defendant's  
20 Exhibit S, a 24-page document, was  
21 marked for identification as of  
22 this date.)  
23 Q. Exhibit S.  
24 A. Yes.

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Joshua Bernstein

<p>Page 198</p> <p>1 Q. That is a composite exhibit          2 which consists of e-mails and maybe          3 e-mail attachments.          4 Did you sign the e-quote          5 with Greenhouse, that's the first page,          6 Greenhouse IT.          7 A. I believe that's my          8 signature.          9 Q. And that's July of '07;          10 there's a date right under your          11 signature?          12 A. Yes.          13 Q. And what were you          14 contracting to get from Greenhouse IT?          15 A. Software installation.          16 Q. What kind of software?          17 A. Spector CNE and configure          18 Trend anti-spyware.          19 Q. Can you explain in layman's          20 terms what that software does?          21 A. That's a monitoring          22 software.          23 Q. What does it enable you to          24 do?</p>	<p>Page 200</p> <p>1 Q. Was he the only one?          2 A. No.          3 Q. Who else could?          4 A. I had the ability to as          5 well.          6 Q. You had the ability. Did          7 you actually monitor what people looked          8 at?          9 A. When asked by Felix, yes.          10 Q. Did you monitor when, on          11 your own, when not asked by Felix?          12 A. Not that I recall.          13 Q. But you had the ability do          14 that?          15 A. Yes, given my administrative          16 rights, yes.          17 Q. When you signed up for this          18 software on line one it says on five          19 workstation, do you see that, the first          20 page?          21 A. Yes.          22 Q. And then if you look through          23 these e-mails you'll see that at some          24 point additional workstations were added;</p>
<p>Page 199</p> <p>1 A. It enables the administrator          2 to monitor activities on computers.          3 Q. Does it enable the          4 administrator to see what people are          5 seeing on their monitors and at their          6 workstation computers?          7 A. I believe that's a function          8 of it.          9 Q. Well, does that apply to,          10 let's say, web pages that they may be          11 looking at on the Internet?          12 A. I believe anything that's on          13 the screen.          14 Q. So it includes e-mails, for          15 example?          16 A. I believe anything that's on          17 the screen.          18 Q. And if you put up a contract          19 that would also be capable of being          20 monitored?          21 A. Anything on the screen.          22 Q. And who was the          23 administrator that could monitor this?          24 A. Felix Satter.</p>	<p>Page 201</p> <p>1 correct?          2 A. I don't see that.          3 Q. Well, let's look at page 8,          4 at the bottom you e-mailed --          5 Simon Binder was from          6 Greenhouse; correct?          7 A. Yes.          8 Q. You e-mailed Simon Binder,          9 and you said, "Here are five other          10 users -- "          11 And you gave initials;          12 correct?          13 A. Yes.          14 Q. Who is D. R.?          15 A. Dan Ridloff.          16 Q. J. K.?          17 A. Jody Kriss.          18 Q. J. S.?          19 A. Julius Schwarz.          20 Q. R. L.?          21 A. Ray Lee.          22 Q. And K. S.?          23 A. (No response.)          24 MR. FEINBERG: K. S.?</p>

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Page 202	Page 204
<p>1 A. I don't recall who K. S. 2 was. 3 Q. As a result of -- 4 Was this software, in fact, 5 installed, at least on these monitors? 6 A. I don't recall whether these 7 additional ones were ever completed. 8 Q. Well, I think if you look 9 through, we're going to look through and 10 be able to determine that. 11 Look on page 11. There's a 12 list of computer users for this software; 13 correct? 14 A. Yes. 15 Q. And I count ten here; is 16 that right? 17 A. Yes. 18 Q. And were all these installed 19 in those ten? 20 A. I believe so. 21 Q. Look on page 13. 22 Greenhouse, is writing, someone from 23 Greenhouse writes to you and says that, 24 "I think that in order to get J. S.</p>	<p>1 Q. And then the answer is to 2 you, "I founded activity for user J. S. 3 from 9/6/07 to 10/9/07. 4 Do you see that? 5 A. Yes. 6 Q. And this e-mail was written 7 on October 9, '07, 10/9/07; correct? 8 A. Right. 9 Q. So this person had said that 10 the software was, in fact, operating on 11 Julius Schwarz' computer, at least from 12 September 6th to October 9th of '07? 13 A. That's what this e-mail 14 says. 15 Q. And none of these e-mails 16 are copied to Felix, Felix Satter, are 17 they? 18 A. Not unless they are blind 19 carbon copied, no. 20 Q. It's just between you and 21 Greenhouse, isn't it? 22 MR. OBERLANDER: Objection. 23 It's calling for a conclusion. He 24 couldn't possibly know. No one</p>
Page 203	Page 205
<p>1 working we need to reboot his laptop." 2 Do you see that? 3 A. Yes. 4 Q. And then he suggests that 5 the computer has to be shut down, and if 6 it's not shut down you have to schedule a 7 reboot to occur overnight, which will 8 force any work he leaves open to close. 9 Do you see that? 10 A. I do. 11 Q. Do you recall whether this 12 was done in order to get Julius Schwarz' 13 computers under this software? 14 A. I don't recall. 15 Q. Well, look on page 22, 16 please. On October 9th, middle of the 17 page, you e-mailed someone at this 18 company and say, "Please let me know 19 about user J. S." 20 Do you see that? 21 A. Yes. 22 Q. That's Julius Schwarz, isn't 23 it? 24 A. Yes.</p>	<p>1 could know because a blind copy 2 won't show up. 3 MR. FEINBERG: It's -- 4 BY MR. DOMB: 5 Q. Apart from blind copies, no 6 one else from Bayrock is copied; isn't 7 that true? 8 A. Not on these e-mails. 9 Q. And from your recollection 10 did you copy Felix Satter on these 11 e-mails? 12 A. Not on these, although Felix 13 Satter sent an e-mail to Greenhouse 14 authorizing this. 15 Q. How do you know that? 16 A. Because he told me he did. 17 Q. Did you see it? 18 A. I did. 19 Q. Did you tell Julius Schwarz 20 about this? 21 A. No. 22 Q. You never copied him on any 23 of this? 24 A. No.</p>

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<p>1 Q. In fact, it was your 2 intention not to tell Julius Schwartz; 3 correct? 4 A. It was Felix's intention to 5 not tell Julius Schwarz. 6 Q. And it was your intention 7 also? 8 A. To follow my instructions, 9 yes. 10 Q. And you were aware that 11 Julius Schwarz was company counsel who is 12 an attorney for the company; correct? 13 A. I was aware, but I believe 14 at this time he was acting -- 15 Yes. 16 Q. And he was superior to you 17 in the company or senior to you, was he 18 not? 19 A. Yes, he was. 20 Q. And you had the ability to 21 look at everything that he looked at on 22 his computer? 23 A. I believe I had the ability. 24 Q. And, in fact, you did look</p>	<p>1 A. I don't recall do that. 2 Q. Is it possible that you did 3 and you just don't recall right now? 4 A. It's possible. I don't 5 recall doing it. 6 Q. Do you think it was proper 7 for somebody without Julius Schwarz's 8 knowledge to monitor what he was looking. 9 In the computer? 10 A. Absolutely. Felix Satter 11 owned the firm, so he told me to do 12 things and I was listening to the boss. 13 Q. And did he tell you this 14 verbally? 15 A. Yes, and then he wrote an 16 e-mail confirming the software should be 17 put on. 18 Q. To your knowledge, did you 19 produce a copy of that e-mail in this 20 litigation? 21 A. Perhaps, but I can double 22 check. 23 Q. Did he copy you on that 24 e-mail?</p>
Page 207	Page 209
<p>1 at what, from time to time at what was on 2 his computer? 3 A. I don't believe I did. 4 Q. You don't believe you did? 5 Are you a hundred percent certain of 6 that? 7 A. Not a hundred percent. This 8 is three years ago, two years ago. 9 Q. So you may have looked at it 10 and you just don't remember right now? 11 A. I don't remember. 12 Q. Did you ever copy things -- 13 Did you have the ability to 14 copy, not just look, but copy things on a 15 screen? 16 A. They were generated in the 17 log filed. They were automatically 18 copied. 19 Q. So you could go to the log 20 and pull up whatever the person had 21 looked at and get a copy of it or forward 22 it to some other place electronically? 23 A. Yes. 24 Q. Do you recall doing that?</p>	<p>1 A. I don't recall. 2 Q. If he did then that should 3 be in your inbox? 4 A. It should. 5 Q. Around what time did Felix 6 send the e-mail that you say he sent to 7 Greenhouse? 8 (Whereupon, the Witness 9 conferred with his attorney.) 10 A. Please repeat the question. 11 Q. Around what time did Felix 12 send Greenhouse the e-mail authorizing 13 the e-mail that you say he sent? 14 A. I don't remember the time. 15 Before this date. 16 Q. On or around July 2007? 17 A. Yes. 18 Q. To your knowledge did Felix 19 ever monitor the, what these various 20 computer users were looking at on their 21 computers? 22 A. I believe so. 23 Q. What's your basis for 24 believing so?</p>

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<p style="text-align: right;">Page 210</p> <p>1 A. Because he had the 2 administrative rights and the ability to 3 do. That's what it was installed for, 4 his use. 5 Q. Did he ever tell you that he 6 did this? 7 A. Yes. 8 Q. Did he ever tell you what 9 things he looked at? 10 A. No. 11 Q. Did he ever tell you 12 anything else about what he looked at or 13 why or when? Do you recall any specifics 14 about what he told you? 15 A. No. 16 MR. OBERLANDER: Which? 17 THE WITNESS: ABC. 18 MR. OBERLANDER: All of 19 them? 20 THE WITNESS: Yes. 21 MR. OBERLANDER: Wouldn't 22 that be a massive amount of 23 storage; right? 24 THE WITNESS: I'll tell you</p>	<p style="text-align: right;">Page 212</p> <p>1 Do you see that? 2 A. Yes. 3 Q. And then it goes on to say, 4 "We collected the requested information 5 and e-mailed it to Josh as per his 6 request." 7 Do you see that? 8 A. Yes. 9 Q. What was the purpose in 10 requesting all admin passwords? 11 A. I was asked to keep a record 12 of everything, because when Greenhouse 13 was brought in they had changed 14 passwords, and we didn't have them on 15 site. So we didn't know the passwords. 16 Q. Did you need the passwords 17 in order to monitor the individual 18 computers? 19 A. No. 20 Q. So what, this was just -- 21 Why did you need it then? 22 A. Recordkeeping. We didn't 23 have access I think -- maybe a day before 24 this we had some problem. We couldn't</p>
<p style="text-align: right;">Page 211</p> <p>1 later. I'm good. 2 MR. DOMB: You gentleman are 3 speaking on the record. Do you 4 want to share with us what you're 5 talking about? 6 MR. FEINBERG: No. There's 7 no question posed, and we can talk 8 whatever we want to talk about. 9 Pose your question and we'll 10 stop talking. 11 BY MR. DOMB: 12 Q. Please look at page 11 of 13 this exhibit, Exhibit S. 14 (Whereupon, the Witness 15 conferred with his attorney.) 16 Q. I'm sorry, 18. If I said 11 17 I meant 18. 18 A. Okay. 19 Q. There's an e-mail here on 20 September, in September 2007 from 21 Greenhouse. It says, "Josh Bernstein 22 would like a list of all admin passwords 23 along with the IP address of the servers 24 and the firewall."</p>	<p style="text-align: right;">Page 213</p> <p>1 access the server, and Greenhouse wasn't 2 able to fix it and I needed to go into 3 it, but I didn't have the password. 4 Q. So sometime in middle, in 5 the second half of 2007, based on you and 6 Felix Satter, you installed spyware on an 7 a number of individuals' computers at 8 Bayrock; correct? 9 A. I'm not sure that's the 10 appropriate term of art. 11 Q. Well, it was a spyware 12 software. You described it yourself. 13 A. No, I did not. 14 Q. Well, okay. You installed 15 spyware that enabled the administrator to 16 look at the contents of the screens of 17 all of the users that are mentioned here? 18 I think we went over this -- 19 MR. FEINBERG: Object to 20 just the form, your 21 characterization. It is what it 22 is. Just take out the word -- 23 A. Here's what's happening. 24 You're misspeaking.</p>

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Page 214	Page 216
<p>1           There's two parts to what 2   you're looking at in the document. The 3   first part is a piece of software that 4   enabled the administrator to view. 5           The second part is Trend, 6   it's anti-spyware, which is the second 7   piece of software, which is specific. 8           Q. I'm focusing on the first 9   piece of software, the Spector CNE. 10          A. CNE, yes. 11          Q. And that enables the 12   administrator to look at the various 13   computer screens -- 14          A. Yes, yes. 15          Q. -- as we just discussed. 16          A. Correct. 17          Q. And how long was this 18   software operating at Bayrock, to your 19   recollection? 20          A. I believe from inception 21   until -- 22          Q. Until the time you left 23   Bayrock? 24          A. I don't know the end date of</p>	<p>1           Q. Looking at Exhibit T, and I 2   notice you're leafing through it. Maybe 3   we can go a little quicker on this one. 4           Do you remember ordering 5   some services and equipment from 1&amp;1 6   Internet Team in or around July of 2008? 7          A. Sounds about right. 8          Q. What were you ordering? 9          A. Service for website hosting 10   and e-mail. 11          Q. For different domains? 12          A. Yes. 13          Q. Which domains? 14          A. MiraxUK.com and 15   Bayrockinc.com and SwissCIB.com. 16          Q. Were those companies related 17   to Bayrock? 18          A. Yes. 19          Q. Mirax was the one that you 20   mentioned before that was a joint venture 21   with Russian entities? 22          A. Yes. 23          Q. What's Bayrockinc? 24          A. That was a, I believe a</p>
Page 215	Page 217
<p>1   it. 2           Q. But as far as you know when 3   you left Bayrock it was still 4   operational? 5          A. As far as I know. 6           MR. DOMB: Please mark 7   Exhibit T, another composite of 8   e-mails and et cetera, numbered 1 9   through 21. 10          (Whereupon, Defendant's 11   Exhibit T, a 21-page document, was 12   marked for identification as of 13   this date.) 14          MR. OBERLANDER: There's no 15   question now; correct? 16          MR. DOMB: No, but there 17   soon will be. 18          MR. OBERLANDER: I 19   understand that, but I want to 20   check something. 21          1&amp;1 is the web hosting 22   company, right? 23          THE WITNESS: (Indicating.) 24   BY MR. DOMB:</p>	<p>1   Delaware company that then Felix Satter 2   took over to transfer his ownership 3   shares of Bayrock into or out of Bayrock 4   Group, LLC. 5           Q. Was that while he was still 6   working at Bayrock or after he left? 7          A. He was still employed. 8           Q. And what about Swiss CIB? 9   What is that? 10          A. That was the name under 11   which the company that Felix was trying 12   to start, Swiss Capital Investment 13   Banking, CIB. 14          Q. So these were websites that 15   each of these companies were setting up? 16          A. Yes. 17          Q. And you did this under whose 18   instruction? 19          A. Felix Satter. 20          Q. Was anyone else from Bayrock 21   involved in these entities other than 22   Felix, to your knowledge? 23          A. Yes. 24          Q. Who?</p>

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<p>1 A. Alina Gorbachev, Yuliya 2 Gashapova, Stan Tolstinov, Paul McKewan 3 or Paul Mozlitz, I don't know which name 4 is legal, and at various times Julius 5 Schwarz. 6 MR. FEINBERG: I'm sorry, 7 what was the question that was 8 posed? 9 MR. DOMB: Who else at 10 Bayrock was involved in these 11 entities. 12 Give me a minute and I'll 13 get these in order. 14 THE WITNESS: Do you mind if 15 I grab bottle of water? 16 (Whereupon, a brief recess 17 was taken.) 18 Q. When your employment at 19 Bayrock ended, did you take with you or 20 retain any Bayrock documents? 21 A. Yes. 22 Q. What documents? 23 A. Various documents. 24 Thousands of different e-mails and such.</p>	<p>1 Q. Any particular topics of 2 e-mails that you chose to print? How did 3 you choose which e-mails to print and 4 keep? 5 A. I don't recall. Usually 6 expenses. 7 Q. Is it fair to say if there's 8 anything important you were more than 9 likely to keep it than if it was wasn't 10 so important? 11 A. That's fair to say. 12 Q. Did you ever, to your 13 knowledge during your employment, write 14 an e-mail to someone at Bayrock 15 confirming a verbal discussion that you 16 had had about your compensation or bonus 17 or benefits? 18 A. Yes, but only parts of it. 19 Q. I mean, we looked at one 20 before where you wrote to Julius Schwarz, 21 remember, and I questioned you about 22 that? Let's just get a number. 23 That was Exhibit G, your 24 e-mail to Julius Schwarz.</p>
Page 219	Page 221
<p>1 Q. Well, did you keep them in 2 paper form or electronic form? 3 A. Both. 4 Q. What did you keep in paper? 5 A. Hundreds of documents, 6 various things that were printed out. 7 Q. Do you still have them? 8 A. I believe so. 9 Q. And in general, you say 10 hundreds of documents? 11 A. Mainly e-mails. 12 Q. So they were printouts of 13 e-mails? 14 A. Mainly. 15 Q. So you printed out e-mails, 16 hundreds of them, and kept them? 17 A. Yes. 18 Q. And you printed them while 19 you were employed at Bayrock? 20 A. Yes, and after. 21 Q. Where did you keep them? 22 A. In my files. 23 Q. At home? 24 A. Yes.</p>	<p>1 A. Oh, yes, the one where Felix 2 threatened me if I didn't write the 3 e-mail. 4 Q. Apart from that, do you 5 recall ever writing to someone at 6 Bayrock, for example writing to Felix and 7 saying, "Felix, I want to confirm our 8 conversation where you promised to do, to 9 pay me X or Y." 10 Did you write any such 11 e-mails? 12 A. You provided one here where 13 I said that you confirm our agreement 14 from yesterday, in exhibit -- 15 Q. You mean the one about your 16 trip, your cancelled trip? 17 A. Yeah, and severance, 18 correct. 19 Q. Okay. Other than what we've 20 seen today, do you recall, specifically, 21 recall any other times when you wrote -- 22 For example, did you write 23 an e-mail to Felix saying, "I want to 24 confirm that you promised to pay me</p>

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Page 222

1 \$200,000, not \$100,000, in connection  
2 with the Loehmann's deal?"  
3 A. No.  
4 Q. Did you write an e-mail to  
5 Tevfik Arif saying that you expected to  
6 be paid the equivalent of a broker, a  
7 broker's fee on the Loehmann's deal,  
8 which would be about million dollars?  
9 A. No. Tevfik Arif did not  
10 have e-mail.  
11 Q. Did you write such an e-mail  
12 to anyone else at the company to let them  
13 know what deal that you say he had  
14 promised you?  
15 A. No. They were all verbal.  
16 Q. Now, getting back, you said  
17 you took paper files and you also took  
18 some electronic files with you when you  
19 left Bayrock?  
20 A. Yes.  
21 Q. What other electronic files?  
22 A. Backup files of my e-mail  
23 and anything else that was available on  
24 my computer.

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1 Q. Well, did you have a backup  
2 file of all your e-mails, incoming and  
3 out-going?  
4 A. No.  
5 Q. How did you --  
6 What is in that backup  
7 file -- well, let me withdraw that.  
8 Whatever you took in a  
9 backup file do you still have it, from  
10 Bayrock?  
11 A. Yes.  
12 Q. So it hasn't changed, you  
13 haven't deleted things from it?  
14 A. I don't believe so.  
15 Q. So you still have that --  
16 Is it in a thumb drive?  
17 What kind of a --  
18 A. Portable hard drive, thumb  
19 drive.  
20 Q. And you still have it in the  
21 same condition containing the same items  
22 that it had before you left Bayrock?  
23 A. Hard to answer the question,  
24 the condition or containing the same

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1 items.  
2 Q. Containing the same items?  
3 A. I believe so.  
4 Q. And what was in it  
5 generally --  
6 Did you go through a similar  
7 process where you selected what to put in  
8 there, or did you just download large  
9 numbers of files indiscriminantly?  
10 A. Indiscriminantly.  
11 Q. What period of time?  
12 A. From approximately  
13 December 2007 to the end of my  
14 employment.  
15 Q. Well, were you able to  
16 download things through September 16th or  
17 through some date earlier when you were  
18 in the office?  
19 A. Through September 16th.  
20 Q. So we discussed before that  
21 for some reason unknown to me and unknown  
22 to Bayrock, four months of e-mails from  
23 your sent box couldn't be found at  
24 Bayrock.

Page 225

1 Are they in your backup  
2 drives that you've maintained all this  
3 time?  
4 A. I don't believe so.  
5 Q. Why not?  
6 A. Because I don't believe they  
7 are there.  
8 Q. But you, it was the  
9 intention when you left Bayrock to  
10 download all these files and put them  
11 into this portable hard drive; correct?  
12 A. Correct.  
13 Q. So you didn't get them  
14 either? Just like Bayrock doesn't have  
15 them you don't have them either?  
16 A. I don't believe so.  
17 Q. Do you have any explanation  
18 for where they are or what happened to  
19 them?  
20 A. Yes. Bayrock deleted them.  
21 Q. Well, the period --  
22 That's your belief. Do you  
23 have any --  
24 A. That's my belief.

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Joshua Bernstein

<p style="text-align: right;">Page 226</p> <p>1 Q. Do you have any hard 2 evidence or hard basis for saying that 3 other than your belief? 4 A. Not at this point. 5 Q. Do you, the period -- I 6 think we went over this -- the period of 7 missing sent e-mails was roughly May 8 through August or September of 2008? 9 A. I don't have it offhand. 10 Q. Approximately. I won't hold 11 you. Give or take a month; is that 12 right? 13 A. I will give that, yeah. 14 Q. So during that period did 15 you download any of your files or all of 16 your files to this portable hard drive? 17 A. During that period I did 18 download files. 19 THE WITNESS: Can I use the 20 bathroom real quick. 21 (Whereupon, a short recess 22 was taken.) 23 MR. DOMB: What's the last 24 question please.</p>	<p style="text-align: right;">Page 228</p> <p>1 A. I don't know. I don't keep 2 count. 3 Q. Do you have the more than 4 one external drive containing Bayrock 5 materials? 6 A. I don't believe so. 7 Q. So you have one? 8 A. Yes. 9 Q. Does that, what do you call 10 that, an external drive? Is that a good 11 term for you to use? 12 A. It works. 13 Q. Does that drive contain 14 items other than Bayrock-related items? 15 A. I believe so. 16 Q. Is there a way for you to 17 separate out the Bayrock from the 18 non-Bayrock? 19 A. Should be. 20 Q. How would you do it? 21 A. Manually. 22 Q. One by one? 23 A. Absolutely. 24 Q. How many different e-mails</p>
<p style="text-align: right;">Page 227</p> <p>1 (Whereupon, the requested 2 question was read back by the 3 reporter.) 4 Q. And you said, I believe that 5 you keep these in a portable hard drive? 6 A. What are these? 7 Q. The electronic files from 8 Bayrock that you took with you? 9 A. I did. 10 Q. And you still have it? 11 A. I don't have that drive, 12 that specific drive, no. 13 Q. You transferred it to a 14 different drive? 15 A. Yes. 16 Q. So the contents are still 17 there? 18 A. Yes. 19 Q. Does the drive have things 20 on it other than Bayrock-related items? 21 A. Does the current drive or 22 the -- 23 Q. Well, how many do you now 24 have?</p>	<p style="text-align: right;">Page 229</p> <p>1 or files are in it? 2 A. I don't know. 3 Q. When you produced documents 4 in this case you did not produce all the 5 Bayrock-related items in that portable 6 hard drive, did you? 7 A. It's all relevant documents. 8 Q. And you made the decision as 9 to what is relevant or not? 10 A. (No response.) 11 Q. Who made that decision? 12 MR. FEINBERG: You served a 13 documented request. He responded 14 to the document request. 15 MR. DOMB: I'm asking a 16 simple question. 17 Q. Who made the decision as to 18 what to produce from that drive? Was it 19 you? 20 A. Between my counsel and I. 21 Q. So did you, are there some 22 Bayrock-related materials that you did 23 not produce? 24 A. Yes.</p>

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<p>1 MR. DOMB: Do you have any 2 objection to producing all 3 Bayrock-related materials that you 4 have not yet produced from that 5 portable hard drive. 6 MR. FEINBERG: I guess if 7 you make a request specifically 8 we'll take it under advisement 9 whether we have a problem with it 10 or not. 11 MR. DOMB: From my review of 12 the document request I thought it 13 was very broad and it was already 14 requested. 15 But, for the record, we do 16 request that you produce promptly 17 all Bayrock-related items from 18 that drive. 19 And as you know there's been 20 a dispute. We also request the 21 ability for an independent 22 computer expert to review that and 23 make sure that that happens. So 24 we do make that request, and</p>	<p>1 produce some and not others, and 2 we are entitled to see all of 3 them. So we make that request. 4 MR. FEINBERG: And we'll 5 verify to see whether the request 6 that you made in terms of the 7 document response has been 8 complied with. 9 And there may be documents 10 other than those which were 11 responsive to your request, which 12 is what I assume you're asking 13 for. 14 In other words, just so 15 we're clear, you have a document 16 request -- 17 MR. DOMB: I'm making two 18 requests. If we requested it and 19 it hasn't been produced, obviously 20 we want it. 21 MR. FEINBERG: Obviously. 22 MR. DOMB: And if you did 23 not read our request broadly 24 enough, we now request all</p>
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<p>1 please mark that. 2 MR. OBERLANDER: That's 3 bilateral, isn't it? I think we 4 made the same request. I'm just 5 saying that it can be coordinated. 6 MR. FEINBERG: You made the 7 request, because you have missing 8 documents that we were going to 9 access to try to find out why or 10 in what manner they were deleted, 11 okay. We've never indicated that 12 we have files that have been 13 deleted or other materials that 14 require -- 15 You don't get access 16 automatically to someone's 17 computer just because you want to 18 see what they have. You made your 19 request and we'll take it under 20 advisement. 21 MR. DOMB: The record says 22 what it says. There are 23 Bayrock-related materials that 24 your side made a decision not to</p>	<p>1 Bayrock-related items in that 2 portable hard drive, whether you 3 deem them to be within our 4 document request, or whether 5 anyone deems them to be -- 6 MR. FEINBERG: That's a new 7 request, and we'll take that under 8 advisement. 9 BY MR. DOMB: 10 Q. Have you now described 11 fairly all of the Bayrock-related items 12 that you took with you after you left 13 Bayrock, that is, paper and electronic 14 files? 15 A. All of what I -- there was a 16 Blackberry that I sent back to Bayrock, 17 that I retained or sent back. 18 Q. Okay. On the Blackberry, 19 you had a Blackberry that was issued to 20 you or provided to you by Bayrock? 21 A. Correct. 22 Q. And after you left Bayrock 23 you sent it back? 24 A. Yes.</p>

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